

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11

Date: 9 July 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

URGENT

Public

Decision on the schedule leading up to trial

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper

Legal Representatives of Victims
Ms Sureta Chana

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Joel Kimutai Bosek
Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

The following decision is issued pursuant to Articles 64, 67 and 68 of the Rome Statute ("Statute"), Rules 69, 76, 77, 81, 132 and 134 of the Rules of Procedure and Evidence ("Rules") and Regulation 54 of the Regulations of the Court ("Regulations").

I. Background and Submissions

1. On 11 June 2012 the Trial Chamber held an initial status conference in accordance with Rule 132(1) of the Rules, which provides that "[p]romptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial." The Chamber indicated at the status conference that it would issue an order on the schedule for trial, including the relevant disclosure deadlines.¹
2. During the course of the status conference, the Chamber heard submissions from the parties on a number of issues related to the upcoming trial, including the schedule for disclosure and the amount of time required by the defence to prepare for trial.
3. The Office of the Prosecutor ("prosecution") has proposed a system of delayed disclosure whereby the identities of testifying witnesses who are part of the Court's protection programme ("ICCPP") would be disclosed to the defence 60 days before the start of trial, while the identities of testifying witnesses who are not part of the ICCPP would be disclosed 30 days prior to the start of trial. The prosecution submitted that it should be permitted to apply to the Chamber on an exceptional basis, when justified by security concerns to a particular witness, in order to withhold the identity of that witness from the defence until 30 days prior to the start of his or her testimony.²

¹ ICC-01/09-01/11-T-15-ENG, page 22, line 24 to page 23, line 1.

² ICC-01/09-01/11-417, paragraphs 5 and 16 – 17.

4. On this issue, both defence teams submitted that they had no objection, in principle, to the first two categories of the prosecution's proposal, *i.e.* the disclosure of the identities of witnesses 30 or 60 days before the start of trial.³ As regards the third category, in which the identities of testifying witnesses would be disclosed after the start of trial but prior to the start of that witness's testimony, the defence for both accused submitted that this situation should be exceptional and that the witness's identity should be disclosed to the defence 45 days before his or her testimony.⁴
5. The defence for both accused suggested in their written submissions that they would require four months after the prosecution had completed disclosure of its evidence in order to prepare for trial.⁵

II. Analysis

6. The right of the accused to be informed of the charges against them and to have adequate time and facilities to prepare their defence, as provided for in the Statute and the Rules, are fundamental to the fairness of the trial. Accordingly, the Chamber has already directed the prosecution to submit an updated DCC that reflects the charges as confirmed by the Pre-Trial Chamber,⁶ and, as discussed below, will require the prosecution to provide a detailed document explaining its case with reference to the witnesses it intends to call and the other incriminating evidence it intends to rely on. The Chamber is satisfied that these two documents will ensure that the accused are informed of the charges against them and are not prejudiced in their preparation for trial.
7. In order for the defence teams to be able to prepare adequately for trial, it is essential for the prosecution to complete its disclosure obligations sufficiently in

³ ICC-01/09-01/11-T-15, page 6, lines 7 – 18 and page 8, lines 10 – 17.

⁴ ICC-01/09-01/11-T-15, page 6, line 19 to page 8, line 8 and page 8, lines 18 – 21.

⁵ Written Submissions in Response to Order Scheduling a Status Conference, 28 May 2012, ICC-01/09-01/11-415, paragraph 6 and Written Submissions in Response to "Order Scheduling a Status Conference", 28 May 2012, ICC-01/09-01/11-416, paragraph 2.

⁶ Order for the prosecution to file an updated document containing the charges, 5 July 2012, ICC-01/09-01/11-439.

advance of trial. The Chamber is of the view that three months between the full disclosure of the prosecution case and the commencement of trial will afford the defence sufficient time to carry out all necessary preparations.

8. Subsequent to ruling on the applicable redactions regime, the Chamber will set deadlines for all applications for protective measures and delayed disclosure of the identities of testifying witnesses. In this regard, the prosecution will be required to apply on a case-by-case basis if it wishes to delay disclosure of the identifying information of any witness. The deadlines indicated below in the schedule leading up to trial for disclosure of the identities of ICCPP witnesses and non-ICCP witnesses with security concerns are the latest dates by which disclosure must have occurred. These deadlines are without prejudice to the Chamber's authority to authorise disclosure after these dates on an exceptional basis and where justified by security concerns. Subject to the case-by-case determinations of the Chamber, disclosure may be required earlier than these dates.

III. Schedule leading up to trial

9. In order to ensure the expeditious conduct of the trial pursuant to Article 64(2) of the Statute and to facilitate the preparation of the parties and participants, the Chamber issues the following schedule leading up to trial:
10. **First joint prosecution/defence filing on agreed facts pursuant to Rule 69 of the Rules.** The prosecution and the defence teams for both accused are directed to liaise with a view to reaching agreement about non-contentious issues. The first joint submission on agreed facts is to be filed by **3 September 2012**.
11. **Prosecution to file *ex parte* (Chamber and Victims and Witnesses Unit ("VWU") only) provisional list of witnesses to be relied on at trial and list of evidence.** In

order to assist the Chamber⁷ and the VWU, the prosecution is to file a provisional list of witnesses to be relied on at trial. This list should include a bullet-pointed summary of the main facts on which each witness is expected to testify. Additionally, the prosecution should indicate the estimated length of time required for each witness and the total time for the presentation of the prosecution case, in hours. The prosecution is also to provide a provisional list of the material it intends to rely on at trial. The prosecution is to file the provisional witness and evidence lists by **16 October 2012**.

12. Prosecution report on joint instruction of experts. The Chamber is of the view that the joint instruction of experts would significantly assist the work of the Court⁸ and accordingly, experts are to be jointly instructed. If, despite all reasonable efforts, the parties are unable to agree upon the joint instructions to be provided to an expert, the matter is to be raised with the Chamber. The prosecution and the defence for both accused⁹ are to liaise in order to discuss the joint instruction of experts, and the prosecution is to revert to the Chamber on the outcome of these discussions by **31 October 2012**.

13. Prosecution to file list of witnesses and list of evidence to be relied on at trial. The prosecution is to provide its witness list, which should include a bullet-pointed summary of the main facts on which each witness is expected to testify, an indication of the estimated length of time required for each witness and the total time for the presentation of the prosecution case, in hours. The prosecution is also to file its list of evidence to be relied on at trial. Both the witness list and the list of evidence are to be submitted by **9 January 2013**.

⁷ See, *e.g.*, Rule 132(2) of the Rules and Regulation 54 of the Regulations.

⁸ The analysis in paragraphs 14 – 23 of Trial Chamber I's "Decision on the procedures to be adopted for instructing expert witnesses" (10 December 2007, ICC-01/04-01/06-1069) if of particular relevance in this regard.

⁹ To the extent that the victims are participating on an issue or as regards evidence which is to be the subject of expert evidence, they are to be given an opportunity to contribute to the expert's instruction.

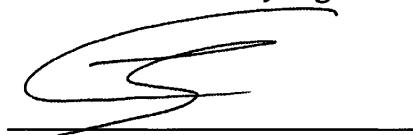
14. **Completion of all disclosure by the prosecution.** Prosecution disclosure to the defence of all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) material and provision of all Rule 77 material for inspection to the defence should be completed by **9 January 2013**.
15. **Prosecution to file pre-trial brief.** The prosecution shall provide a document explaining its case with reference to the evidence it intends to rely on at trial. This document will be referred to as the "pre-trial brief". The pre-trial brief should contain, for each count, a summary of the relevant evidence of each witness to be relied on at trial and all other evidence upon which the prosecution intends to rely, and shall clearly explain how the evidence relates to the charges. The pre-trial brief is to be filed by **9 January 2013**.
16. **Prosecution disclosure to the defence of identities of witnesses in the ICCPP.** Disclosure to the defence of the identities of ICCPP witnesses who have been the subject of an application for delayed disclosure as discussed in paragraph 8 above should be completed by **11 February 2013**.
17. **Disclosure of expert reports.** Disclosure of the reports of any expert witness who will be called during the prosecution case should be completed by **14 February 2013**.
18. **Second joint prosecution/defence filing on agreed facts pursuant to Rule 69 and evidence.** The prosecution and the defence teams for both accused are to liaise with a view to reaching agreement on facts as well as the authenticity of evidence. Any party which is unable to agree to a proposed stipulation shall reflect the reasons and indicate the factual basis for this disagreement in an annex to the joint filing. The second joint submission on agreed facts (including agreements as to evidence) is to be filed by **8 March 2013**.

19. **Prosecution disclosure to the defence of identities of non-ICCP prosecution witnesses.** Disclosure to the defence of the identities of non-ICCP witnesses with security concerns who have been the subject of an application for delayed disclosure as discussed in paragraph 8 above should be completed by **12 March 2013**.
20. **Commencement of trial.** The trial will commence following the Spring Judicial Recess, on **10 April 2013**.

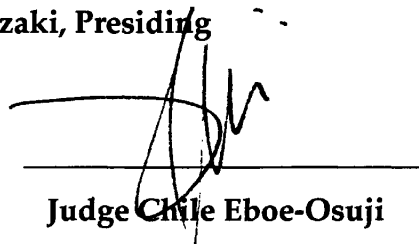
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 9 July 2012

At The Hague, The Netherlands